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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/456,603	12/08/1999	Robert Walter Dmitroca	10981247-1	6669

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EXAMINER

WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
2141	13

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/456,603	DMITROCA, ROBERT WALTER	
<b>Examiner</b>	<b>Art Unit</b>	Stephan F Willett	2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 July 2003.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-7 and 12-17 is/are rejected.

7) Claim(s) 8-11 and 18-20 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Response to Arguments***

1. In view of the Appeal Brief filed on 7/18/03, PROSECUTION IS HEREBY REOPENED, as set forth below.
2. To avoid abandonment of the application, appellant must exercise one of the following two options:
  - (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
  - (2) request reinstatement of the appeal
3. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

***Allowable Subject Matter***

4. Claims 8-11 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form

Art Unit: 2141

the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371<sup>®</sup> of this title before the invention thereof by the applicant for patent.

6. Claims 1-4, 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Baker et al.

with Patent Number 5,226,118.

7. Regarding claim(s) 1, 12, Baker teaches a data analysis system. Baker teaches receiving data, col. 5, lines 55-57 and 61-62. Baker teaches determining the range of data, col. 7, lines 14-18 and col. 6, lines 13-19. Baker teaches incrementing a count if data is within a certain range as in a histogram, col. 8, lines 41-43. Baker teaches storing the data in an array even if it is outside the range, col. 11, lines 38-42. Baker teaches scaling the range of values to within the data set, col. 14, lines 18-24.

8. Regarding claims 2, Baker teaches scaling all data received, col. 12, lines 11-14.

9. Regarding claims 3-4, 13-14, Baker teaches formatting the data for a GUI, col. 13, lines 32-36.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2141

11. Claims 5, 7, 15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al. with Patent Number 5,226,118 in view of Fletcher et al. with Patent Number 6,321,264.

12. Regarding claim(s) 5, 15, Baker teaches a data analysis system. Baker teaches the invention in the above claim(s) except for explicitly teaching using data that consists of network delay times for packets. In that Baker operates to manipulate data sets, the artisan would have looked to the database arts for details of implementing data manipulation and data displays. In that art, Fletcher, a related data display system teaches “a data packet takes a measurable amount of time to travel from client computer system to server”, col. 8, lines 17-19 in order to create usable data. Fletcher specifically teaches a “data table is used to store entries consisting of the time difference between these time-stamps”, col. 9, lines 49-51. Displaying a range of values that consist of time delays for packet transport is taught and inherently said data can be generated with a ping command. Further, Fletcher suggests “display device if Fig. 2 utilized with client computer”, col. 7, lines 7-8 will display said generated data. The motivation to incorporate data consisting of time delays insures that relevant data is displayed. Thus, it would have been obvious to one of ordinary skill in the art to incorporate various time delay data as taught in Fletcher into the data system described in the Baker combination because Baker operates with graphical data and Fletcher suggests that said data can be displayed on a GUI. Therefore, by the above rational, the above claim(s) are rejected.

13. Regarding claims 7, 17, Baker teaches recalculating based on determined parameters, col. 14, lines 61-62.

14. Claims 6, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al. with Patent Number 5,226,118 in view of Siu et al. with Patent Number 5,883,924.

15. Regarding claim(s) 6, 16, Baker teaches a data analysis system. Baker teaches the invention in the above claim(s) except for explicitly teaching determining jitter from measured data. In that Baker operates to manipulate data sets, the artisan would have looked to the database arts for details of implementing data manipulation and data displays. In that art, Siu, a related data display system teaches "the user may specify the histogram range", col. 7, lines 3-4 in order to create usable data. Siu specifically teaches "each bin in the histogram is defined by a range of PCR jitter", col. 7, lines 2-3. Displaying a range of values that consist of jitter for packet transport is taught and inherently said data can be generated with a ping command. Further, Siu suggests "bin boundaries are calculated from the range", col. 7, lines 4-5 to display and generate data. The motivation to incorporate data consisting of jitter insures that relevant data is displayed. Thus, it would have been obvious to one of ordinary skill in the art to incorporate various jitter data as taught in Siu into the data system described in the Baker combination because Baker operates with graphical data and Siu suggests that said jitter data can be displayed on a GUI. Therefore, by the above rational, the above claim(s) are rejected.

*Response to Amendment*

16. Based on the new grounds for rejection, the applicant's arguments are moot. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.

17. The limited structure claimed, without more functional language, reads on the references provided. Thus, Applicant's arguments cannot be held as persuasive regarding patentability.

18. Applicant suggests this "does not teach scaling the current range and size of portions, if

the data value is not within the current range" Paper No. 12, Page 8, lines 28-29. These steps are inherent in displaying any GUI display of a graph, especially when "the user need only be able to identify and select data points of interest", col. 7, lines 15-16 and a graph will be scaled to the range selected by the user. In addition, the references cited are filled descriptions using ranges and scaling to achieve an intelligible graph Thus, Applicant's arguments can not be held as persuasive regarding patentability.

***Conclusion***

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.
20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.
21. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605.

  
Stephan Willett

Patent Examiner

September 9, 2003